IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Dudaram & Ors. v. Mohanlal & Ors.

S.B.CIVIL WRIT PETITION NO.1975/2000
under Articles 226 and 227 of the Constitution of India.

Date of Order : 4th January, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. C.R.Jakhar, for the petitioners.
Mr. N.S.Acharya, for the respondents.

BY THE COURT :

Reportable

This petition for writ is directed against the judgment and decree dated 10.8.1999 passed by learned Board of Revenue for Rajasthan, Ajmer in Second Appeal No.14/94/TA/Pali and the judgment and decree dated 10.5.1994 passed by learned Revenue Appellate Authority, Pali in Appeal No.317/89.

The facts on which the present dispute is centered are that respondent No.1 Mohanlal preferred a suit before the court of Sub Divisional Officer, Bali under Sections 41 and 183 of the Rajasthan Tenancy

Act, 1955 for transfer of khatedari rights and for ejectment of trespasser.

The case of the plaintiff, as averred in the plaint, was that through a registered sale deed dated 7.12.1974 he purchased an agricultural land bearing khasra No.21 in village Basada, Tehsil Desuri measuring 10 bighas from Bhagaram (respondent No.2) and possession of the land was also acquired by him immediately. He remained with possession of the land for continuous three years but Shri Bhagaram did not proceeded for getting the mutation transferred in revenue records. In the year 1978 he was dispossessed by the defendants from the land in question, therefore, he sought a decree for ejectment and to transfer khatedari rights in his favour.

The defendant petitioners submitted a written statement stating therein that through the registered sale deed dated 8.1.1979 the land in question was sold to defendant Chhogaram by Shri Bhagaram and since then the are in peaceful possession of the land. The khatedari rights too were transferred in name of Chhogaram and he paid all revenue. The parcha lagaan was also issued in the name of Chhogaram in settlement proceedings. The defendant petitioners denied the averments made in the plaint with regard to plaintiffs possession over the land in question.

On basis of pleadings the trial court framed four issues as follows:-

> "(1) आया कृषि भूमि खसरा नम्बर 21 रकबा 10 बीघा जो प्रतिवादी द्वारा वादी के हक में तारीख 15.7.74 को मुआवजा लेकर मुन्तकिल कर दी व कब्जा सौप दिया ? .... वादी
>
> (2) आया सन् 1978 में प्रतिवादीगण से मिल कर वादी की उक्त भूमि पर नाजायज कब्जा कर दिया जो अभी तक रिटेन किये हुए हैं ? .... वादी
>
> (3) आया वादी को प्रतिवादीगण द्वारा जबरन बेदखल किये जाने से वादी को हर्जाना काश्त का हुआ जो माफिक कानून हर्जाना पाने का अधिकारी हैं ? .... वादी
>
> (4) आया प्रतिवादी नं. 3 के हक में किया गया बैचान दिनांक 8.1.79 जायज व वेलिड हैं एवं उसके जरिये कब्जा प्रतिवादीगण नं. 3 का होने से अब यह वाद नहीं चल सकता हैं? ..... प्रतिवादी"

Shri Mohanlal (plaintiff), Shri Bhagaram and Dhanraj were produced in witness box in favour of the plaintiff and their statements were recorded. On behalf of defendants statements of M/s Balchand, Mularam and Jetharam were recorded. Devaram and Banshilal were produced as witness in rebuttal by the plaintiff.

The trial court while deciding the issue No.1 against the plaintiff held that the sale said to be made in favour of the plaintiff through the sale deed

dated 7.12.1974 is void ab-initio being in violation of provisions of Section 23 of the Registration Act, 1908 (hereinafter referred to as"the Act of 1908"). The trial court held that the sale deed was executed on 15.7.1974 but was presented and registered on 7.12.1974 i.e. after a period of more than four months, as such the registering authority in light of provisions of Section 23 of the Act of 1908 was lacking jurisdiction to register the document presented before it after a period of four months from the date of its execution.

Beside the above, the trial court also not found the sale of the land to plaintiff bonafide in view of the statement given by Bhagaram (PW-2) who stated that from childhood he was in service of plaintiff Mohanlal at Mumbai, all expenses occurred in his marriage were borne by the plaintiff and then he sold the land to the plaintiff. The trial court also held that possession of the land was never with the plaintiff petitioners.

The issues No.2 and 3 were also decided against the plaintiff respondent in view of the fact that plaintiff respondent failed to prove issue No.1. The issue No.4 was decided by the trial court in favour of defendant petitioners. Accordingly the suit was dismissed by the judgment dated 2.4.1989.

The plaintiff respondent being aggrieved by judgment dated 2.4.1989 passed by the trial court preferred an appeal under Section 223 of the Rajasthan Tenancy Act, 1955 before the Revenue Appellate Authority, Pali. The Revenue Appellate Authority by its judgment dated 10.5.1994 accepted the appeal and set aside the judgment dated 2.4.1989. The Revenue Appellate Authority decreed the suit preferred by the plaintiff by declaring him as khatedar of the land in question and by making an order to dispossess the defendant petitioners from possession of the land in question. The Revenue Appellate Authority while setting aside the order passed by the trial court held that transfer made under the sale deed dated 7.12.1974 could not be treated as a paper transfer and, therefore, all the rights vested with Bhagaram stood transferred to the plaintiffs. The appellate court while giving such finding did not consider the effect and impact of the provisions of Section 23 of the Act of 1908 on count of which trial court held the sale under the deed dated 7.12.1974 void ab-initio.

The validity and propriety of the judgment dated 10.5.1994 passed by Revenue Appellate Authority, Pali was assailed by the petitioners by way of filing an appeal before Board of Revenue for Rajasthan, Ajmer under Section 224 of the Rajasthan Tenancy Act. The appeal stood rejected by the Board of Revenue by its

judgment dated 10.8.1999, wherein the Board held that though the sale deed which was written on 15.7.1974 and registered on 7.12.1974 was made by recorded khatedar Bhagaram but the revenue records were not mutated on basis of this sale, therefore, he did the mischief of executing second sale in favour of Chhogaram by twisting his name as Bhagia. The mischief could not be given weightage and no right, title and interest could accrue by such second sale in favour of vendees because until and unless first sale deed made by Bhagaram in favour of Mohanlal is not set aside or cancelled by a competent court.

The Board of Revenue also not considered the effect and impact of provisions of Section 23 of the Act of 1908 while rejecting the appeal preferred by judgment dated 10.8.1999. Hence, the instant writ petition is preferred by the defendant petitioners before this Court giving challenge the judgments and decrees passed by the Revenue Appellate Authority, Pali and Board of Revenue for Rajasthan, Ajmer.

While giving challenge to the judgments and decrees above it is contended by counsel for the petitioners that the Revenue Appellate Authority as well as Board of Revenue failed to appreciate that in light of provisions of Section 23 of the Act of 1908 the registering authority was having no authority to register the sale deed on 7.12.1974 which was executed

on 15.7.1974. According to counsel for the petitioners the trial court rejected the suit while deciding the issue No.1 against the plaintiff respondents by treating the sale deed void ab-initio in view of the provisions of Section 23 of the Act of 1908. The appellate courts, therefore, were required to examine the effect and impact of the provisions of Section 23 of the Act of 1908 while reversing the finding given by the trial court. It is further contended by counsel for the petitioners that the appellate courts also failed to consider the finding given by the trial court while reversing the judgment dated 2.4.1989, with regard to the sale made by Bhagaram in favour of plaintiff Mohanlal, which was not bonafide as Bhagaram was working as servant with plaintiff Mohanlal at Mumbai and further Mohanlal was never a bonafide agriculturist.

A reply to the writ petition has been filed on behalf of the respondents with a preliminary objection that the judgments impugned passed by Board of Revenue for Rajasthan, Ajmer and by the Revenue Appellate Authority, Pali do not suffer from any error apparent on face of record and also that the concurrent findings given by the Revenue Appellate Authority and Board of Revenue does not warrant interference of this Court in its extraordinary jurisdiction.

It is also contended by plaintiff respondents that the trial court erred while treating the sale deed dated 7.12.1974 as void without getting it declared void by a competent court.

Heard counsel for the parties.

It is strenuously urged by counsel for the respondents that this Court should not interfere in the matter by issuing a writ in the nature of certiorari as there is a concurrent finding of two courts, those are the Revenue Appellate Authority, Pali and the Board of Revenue for Rajasthan, Ajmer. According to counsel for the respondents both the courts after considering all relevant facts found the finding given by the trial court erroneous and held that the registered sale deed dated 7.12.1974 could not be treated void without being declared as such by a competent court.

I have thoroughly scanned the judgments impugned. The Revenue Appellate Authority by its judgment dated 10.5.1994 held that transfer made under the sale deed dated 7.12.1974 could not be treated as a paper transfer and, therefore, all the rights vested with Bhagaram stood transferred to the plaintiffs. The Revenue Appellate Authority while holding as above did not consider the effect and impact of the provisions

of Section 23 of the Act of 1908 on basis of which trial court held the sale under the deed dated 7.12.1974 void ab-initio. The trial court while dealing with the issue No.1 held that the sale deed was executed on 15.7.1974 and the same was presented and registered on 7.12.1974 i.e. after a period of more than four months and according to Section 23 of the Act of 1908 the registering authority was not having jurisdiction to register the same. The Revenue Appellate Authority not at all discussed the provisions of Section 23 of the Act of 1908 while reversing the finding given by the trial court.

The Board of Revenue also not considered this aspect of the matter while holding that the sale deed dated 7.12.1974 was made by recorded khatedar Bhagaram and he did mischief of executing second sale in favour of Chhogaram by twisting his name as Bhagia. It is well settled that the appellate court should always examine all the contentions raised by the parties to the lis and also scan reasons and finding given in the order under appeal. If the appellate authority choose to reverse finding given in the order impugned then it should be supported by sufficient reasons.

In the instant case the Revenue Appellate Authority as well as the Board of Revenue failed to consider the reasons given by the trial court for deciding the issue No.1 against the plaintiff on basis

of which the suit was dismissed. From perusal of the orders impugned it is apparent that both the appellate courts ignored the reasons and findings given by the trial court. Such orders passed by the appellate court can conveniently be termed as perverse orders. Such orders always warrant interference of this Court in its writ jurisdiction.

After holding the orders passed by both the courts below perverse, the matter could have been remanded to the Revenue Appellate Authority for adjudication of appeal afresh in accordance with law, however, as the question involved in present petition is purely a legal question, therefore, instead of remanding the matter to Revenue Appellate Authority for disposal of appeal afresh, I consider it appropriate to get the issue involved in present petition adjudicated by this Court.

It is contended by counsel for the petitioners that the finding given by the trial court with regard to issue No.1 is based on sound appreciation of provisions of Section 23 of the Act of 1908, therefore, the appellate courts committed an error while reversing the same. Section 23 of the Act of 1908 reads as under:-

> “23. Subject to the provisions contained in Secs.24, 25 and 26, no document other than a

> will shall be accepted for registration unless presented for that purposes to the proper officer within four months from the date of its execution: Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final."

According to Section 23 of the Act of 1908, subject to the provisions contained in Secs.24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purposes to the proper officer within four months from the date of its execution. In other words, the registering authority lacks jurisdiction to accept a document other than a will for its registration if not presented for the purpose of registration within a period of four months from the date of its execution. The only exceptions given under the Act of 1908 are the circumstances as prescribed under Sections 24, 25 and 26 of the Act of 1908. Sections 24 and 26 are having no application in present controversy as neither the document was sought to be executed by several persons at different times nor it was required to be executed out of India. The provisions of Section 25 of the Act of 1908 are also not having any application as there is no case of urgent necessity or unavoidable accident causing delay in presentation of the document. No application as required under sub-

section(2) was also preferred by the plaintiff respondent, while presenting the sale deed dated 15.7.1974, for its registration.

In sub-para (c) of para 7 of reply to the writ petition the plaintiff respondent in quite unambiguous terms admitted that the sale deed was executed on 15.7.1974 and the same was presented for registration on 7.12.1974. In view of admitted facts as above and in view of the provisions of Section 23 of the Act of 1908 the registering authority on 7.12.1974 was having no jurisdiction to accept the sale deed presented before him for its registration. The registering authority while accepting and registering the sale deed acted beyond jurisdiction vested with him.

Hon'ble Rangoon High Court while dealing with the same question in the case of Maung Aung Din and another v. Maung Aung Myint and others, reported in AIR 1933 Rangoon 5, held as under:-

> "It has been contended that at the time the document was presented for registration it was open to the party presenting it to apply to the registrar for permission to register the document in accordance with the special procedure provided by S.25 of the Act. It is quite clear however that no such application was actually made. The document was presented to the Sub-Registrar for

> registration after the expiry of the four months from the date of the execution, and under S.23, Registration Act, the Sub-Registrar had no jurisdiction to entertain the application or to register the document."

Hon'ble Rangoon High Court held that the document presented to the Sub-Registrar for registration after expiry of four months from the date of execution and under Section 23 of the Registration Act, the Sub-Registrar had no jurisdiction to entertain the application or to register the document. From reading of Section 23 of the Act of 1908 itself it is quite clear that the authority competent for registration of the document other than a will looses jurisdiction to accept the document for its registration subject to the provisions contained in Sections 24, 25 and 26. If an action is taken beyond jurisdiction vested, then the action is not mere an irregularity but is certainly makes the action taken void ab-initio. No cognizance of such action and its consequents could be taken for any purpose.

It is contended by counsel for respondent Shri Mohanlal that though the registering authority was lacking jurisdiction on 7.12.1974 to accept the document for registration but for any reason he accepted the document and register the same, therefore, until the document i.e. sale deed dated 7.12.1974 is declared void by a competent court, same

is required to be treated as a valid instrument. To substantiate the contention he has placed reliance upon a judgment of Hon'ble Supreme Court in the case of State of Kerala v. M.K.Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and others, reported in AIR 1996 SC 906. The counsel for the respondent has emphasised the discussion made and law laid down by Hon'ble Supreme Court in para 6 of the said judgment, which reads as under:-

> "It is not necessary for us to go into the merits of the case. We are of the view that the order passed inter parties in C.R.P. 3440 of 1977 dated 2-11-1977, has become final, and it concludes the matter. The observations made in the proceedings, at the instance of the 1st respondent regarding the validity of the order of the Board, in C.R.P. 3696 of 1977, will not, in any way, affect the legality and validity of the proceedings declining to implead respondents Nos.3 and 4 or the order passed in Revision therefrom – C.R.P. 3440 of 1977. It is true that the proceedings dated 28-6-1977 was observed to be void in law in C.R.P. 3696 of 1977, filed by the first respondent. In our opinion, even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact be effective inter parties until it is successfully avoided or challenged in higher forum. Mere use of the word "void" is not determinative of its legal impact. The work "void" has a relative rather than an

> absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity, depending upon the gravity of the infirmity, as to whether it is, fundamental or otherwise and in this case, the only complaint about the initiation of the suo motu proceedings by Board was, that it was not initiated on intimation by the State Land Board about the non-filing of the statement as required by Section 85(7) of the Kerala Land Reforms Act. In our opinion, this is not a case where the infirmity is fundamental. It is unnecessary to consider the matter further."

I am having no doubt that even a void order or decision rendered between the parties cannot be said to be non-existent in all cases and in all situations, such an order shall always be effective in inter parties until it is successfully avoided or challenged in higher forum. However, the circumstances and facts of the case in hand are totally different and in present set of facts the law laid down by Hon'ble Supreme Court in the case of State of Kerala v. M.K.Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and others (supra) is having no application.

In the case of State of Kerala v. M.K.Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and others (supra) in a ceiling case an application was preferred by two sisters to be impleaded as party. The case was pertaining to their

brother. The application submitted by sisters was rejected by the competent authority and a revision petition preferred before Kerala High Court against the order rejecting application for becoming party also stood rejected. At a subsequent stage an another application was filed by the same sisters for becoming party to the ceiling case and that application was accepted. A challenge was given to the order permitting the sisters to be impleaded as party respondents. Hon'ble Supreme Court ultimately held that the order rejecting the application of the sisters to be party of the proceedings may be void but was an order in a lis within the same parties, therefore, is required to be determinative of its legal impact without being set aside by the higher court.

In the present case the registration made on 7.12.1974 was not between the petitioners and respondent Mohanlal. The present petitioners are not at all concerned with the registry made on 7.12.1974, therefore, the registration of the document on 7.12.1974 by registering authority was not at all an order inter parties of the present lis. The petitioners, therefore, are not bound by the said registration of sale deed dated 7.12.1974.

In view of whatever discussed above the law laid down by Hon'ble Supreme Court in the case of

State of Kerala v. M.K.Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and others (supra) is not at all supportive to the respondent plaintiff. The sale deed registered by the registering authority on 7.12.1974 is having no legal consequences and also not create any right in favour of the plaintiff as it was registered by an authority lacking jurisdiction to do so.

In the result this petition for writ deserves acceptance. Accordingly the same is allowed. The judgment and decree dated 10.8.1999 passed by learned Board of Revenue for Rajasthan, Ajmer in Second Appeal No.14/94/TA/Pali and the judgment and decree dated 10.5.1994 passed by learned Revenue Appellate Authority, Pali in Appeal No.317/89 are hereby quashed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.